STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

UNI-UNITED FACULTY (AAUP IHEA), Complainant, and STATE OF IOWA (BOARD OF REGENTS), Respondent.	)	CASE NO. 100798

DECISION ON APPEAL

Upon UNI-United Faculty's appeal filed pursuant to PERB subrule 621—9.2(1), this case seeks the Public Employment Relations Board's (PERB or Board) review of a Proposed Decision and Order issued by a PERB administrative law judge (ALJ) on April 19, 2018. In her Proposed Decision and Order, the ALJ concluded that UNI-United Faculty (United Faculty) had failed to establish the State of Iowa's commission of prohibited practices within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(*a*), (*e*), and (*f*) when the State failed to make counter offers to outstanding issues and failed to meet for bargaining or mediation for negotiations of a successive collective bargaining agreement effective July 1, 2017. The State denies its commission of prohibited practices.

United Faculty appealed the ALJ's proposed decision and order to the Board pursuant to PERB rules. In accordance with Iowa Code section 17A.15(3), on appeal from an ALJ's proposed decision, the Board possesses all powers that it would have possessed had it elected, pursuant to PERB rule

621—2.1, to preside at the evidentiary hearing in the place of the ALJ. On this appeal, we have utilized the record as submitted to the ALJ.

The parties' representatives presented oral arguments to the Board on August 8, 2018. Attorney Nate Willems represented United Faculty and attorney Andrew Tice represented the State. Prior to oral arguments, the parties filed briefs outlining their respective positions.

Based upon our review of this record, as well as the parties' briefs and oral arguments, we make the below findings of fact and conclusions of law. We conclude the State did commit prohibited practices.

I. FINDINGS OF FACT.

A. The Parties.

The State of Iowa is a public employer within the meaning of Iowa Code section 20.3(10) and United Faculty is an employee organization within the meaning of Iowa Code section 20.3(4).[1] Since 1976, United Faculty has been the certified bargaining representative for the bargaining unit of faculty employed by the State of Iowa, Board of Regents, at the University of Northern Iowa (UNI).

Although the State is the employer, representatives of the Board of Regents (BOR) negotiate the contracts for the state universities, including UNI.[2] United Faculty and the BOR have negotiated and have been parties to

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[1] All references are to Iowa Code (2017) prior to the passage of 2017 Iowa Acts, House File 291.

[2] For this reason, the "BOR" is distinguished from the State in the findings of fact and areas of the conclusions of law, but is referred to collectively with the State as the "State" or "State/BOR" when referencing the Respondent.

successive collective bargaining agreements. By statute, state contracts are for two year terms and contract negotiations, including all impasse procedures, must be completed by March 15 of the year the new contract becomes effective. (*See* Iowa Code § 20.17(10)).

For negotiations of a successor collective bargaining agreement effective July 1, 2017, to June 30, 2019, United Faculty's chief negotiators were attorney Nate Willems and United Faculty President Joe Gorton who had negotiated the previous contract. The BOR was represented by its newly-hired chief negotiator, outside attorney Mike Galloway, who was experienced in contract negotiations, including non-BOR state contract negotiations. The BOR was also represented by its in-house legal counsel, Tim Cook, and UNI associate counsel, Kyle Fogt.

Because Galloway was new to these parties' negotiations, he arranged for an introductory meeting on October 10, 2016, with some of United Faculty's negotiation team, including President Gorton, but not attorney Willems.[3] At this meeting, Galloway relayed others' concern about the numerous past bargaining sessions. He indicated his approach was for fewer meetings than previous and, if not done, then proceeding to mediation. He testified, "And we knew we all wouldn't agree on everything, but we were going to move the process forward." The parties agreed to exchange initial proposals on November 18, 2016. Later that day, UNI associate counsel Fogt emailed UNI

[3] The evidence is more persuasive that Willems did not attend the meeting when he did not recall attending the meeting, his calendar did not reflect the meeting, and others could not affirmatively recall his attendance.

and the BOR representatives to report on their meeting with United Faculty and the agreed upon date of the parties' exchange of initial proposals. He indicated, "We likely will not have bargaining sessions until January."

B. Bargaining.

In testimony, Galloway described the typical state negotiation process,

> [T]he [l]egislature gets back, they're starting to figure out money, that's when – I think you can even look at this year with AFSCME statewide negotiations, I don't know when exactly they started, but I would be shocked if it wasn't December, early January when they were actually at the table. Similarly for SPOC, which is the State Police Officers Council.

The parties exchanged initial comprehensive proposals on November 18, 2016. With respect to wages, United Faculty proposed a four (4) percent increase and the BOR proposed a half (.5) percent increase.[4]

In early December following the November elections, both parties were aware of looming changes to collective bargaining by the newly-elected legislature. On December 7, 2016, Gorton sent out a message to his members regarding the new UNI president. At the end of his message, Gorton mentioned the potential for "grave risk" of assault, although unknown, upon Iowa Code chapter 20 collective bargaining rights once the legislature convened in January.

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[4] United Faculty's initial offer included proposals with changes regarding Articles Two (United Faculty Rights), Three (Evaluation Procedures), Four (Personnel Files), Five (Staff Reductions), Seven (Leaves), and Eight (Salaries), and Appendices B (Promotion & Tenure) and G (Salary Tables). The BOR's initial offer included proposals with changes regarding Articles One (Recognition), Two (United Faculty Rights), Three (Evaluation Procedures), Six (Summer Employment), Seven (Leaves), Eight (Salaries), and Nine (Insurance), and Appendices B (Promotions & Tenure), F (Faculty Evaluation), and G (Labor Management Committee).

The parties met for bargaining on December 15, 2016. United Faculty presented a comprehensive "package" counterproposal that accepted many of the BOR's initial proposals. The parties negotiated all the provisions and Galloway marked "T/A" (tentative agreement) beside each agreed upon item. However, Galloway did not have authority to sign-off on the tentatively agreed to proposals and could only recommend a tentative agreement to the BOR.

As was typical for past bargaining, senior vice president of finance and operations, Mike Hager, was present to report on UNI finances. The BOR had requested a two (2) percent increase in its legislative appropriation and an additional $2.5 million for UNI. The state appropriation compromises less than half of UNI's operating revenues. Hager expressed UNI's financial concerns and indicated the Revenue Estimating Conference reported decreased estimated state revenues.

The parties agreed upon one of the two big monetary items—insurance. For wages, United Faculty proposed a two and three-quarters (2.75) percent increase each year. During the meeting, Willems presented a second wage option tied to whether UNI was thereafter awarded the additional $2.5 million appropriation requested, i.e., although not knowing at the time of the agreement, the BOR would be bound to pay a one and one-half (1.5) percent increase if UNI did not receive the appropriation or two and one-half (2.5) percent increase if UNI did.

At the end of the day, the parties had agreed upon all, but two items: evaluation procedures and wages. With the former, the understanding was

that UNI administration would thereafter prepare an evaluation procedures proposal to provide to United Faculty.

C. Conduct after December 15.

On December 22, Galloway told United Faculty that the BOR would provide the evaluation procedures proposal by December 23, but the BOR was still working on a wage proposal. After December 23, but prior to January 31, the BOR determined, because of financial uncertainties and potential modifications to Iowa code chapter 20, further wage offers would not be made to the union.[5]

After the meeting in December, Willems tried to reach Galloway several times by telephone to inquire on the status of the BOR's wage proposal. UNI students returned on January 9, 2017. By text January 11, 2017, Willems requested an update from Galloway who responded,

> I am trying to get a hard financial number to offer. The BOR is going to be cut another 25 mm [sic]. UNI wants to get this settled. I have been talking to legislative staff and I would strongly suggest you guys take whatever I can get you. I am recovering from knee surgery today.

With respect to his email, Galloway testified that UNI wanted to get it done, but was "very concerned about financial issues" and was taking into account the "uncertainty and confusion with the statutory language in [c]hapter 20."

Willems and Galloway talked by telephone on January 17, 2017. The next day, at Galloway's request, PERB offered the parties 14 possible mediation

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[5] This fact, among others, was stipulated to by the parties.

dates, ranging from January 21 through February 11, 2017. The BOR rejected all 14 dates.

On January 24, 2017, Willems and Galloway talked again by telephone. Either in this conversation or the conversation on January 17, 2017, Galloway indicated that the BOR was waiting out the legislative changes to chapter 20 and would not proceed forward in negotiations in the interim. The next day, Willems and Galloway set an impasse schedule as follows:

> February 10, 2017 – strike list of arbitrators;
> February 20, 2017 – mediation;
> February 24, 2017 – exchange final offers;
> March 2, 2017 – arbitration hearing; and
> March 15, 2017 – arbitrator's decision.

Although Galloway was unaware, Willems felt compelled to accept the late dates offered and thought United Faculty would commit a prohibited practice by refusing the proposed schedule. Nevertheless, Willems did not object to the schedule.

On January 31, 2017, Galloway stated via email the following to Willems:

> To provide a little more clarity, my client has informed me that I cannot agree to anything until the introduction and subsequent passage of the reforms to [c]hapter 20. They believe this will all occur in mid-February. This is why we set the United Faculty schedule the way we did so that there is at least some clarity.

On February 1, 2017, the UNI appropriation for the current fiscal year was reduced by $2,520,500. United Faculty filed this prohibited practice complaint on February 3, 2017.

D. Changes to chapter 20—House File 291.

From November 2016 through January 2017, Galloway had contact and numerous meetings with the Senate Chair and the House Chair of Labor about pending legislation to amend chapter 20. He also recommended reforms although they were not adopted in the legislation. Galloway had discussions with Willems about the pending legislation, but the record does not reflect the substance or dates of their discussions other than the ones noted herein and a text between the two on December 16, 2016.

On February 7, 2017, the House and Senate introduced legislation to reform chapter 20. The proposed amendments distinguished bargaining rights for "public-safety" bargaining units versus "non-public-safety" bargaining units. For the non-public-safety units, the former laundry list of 18 mandatory subjects was eliminated and replaced with one single mandatory subject, "base wages." Six of the former mandatory subjects were designated as "excluded" subjects. The proposed changes limited arbitrator awards on base wages to the lesser of three (3) percent or the consumer price index (CPI) for a stated period.

On February 9, 2017, the parties struck the list of arbitrators. By email, Willems inquired of Galloway and Cook if the BOR's last wage offer was still on the table, but Willems never received a response.

With minimal changes, the legislature approved the chapter 20 reform legislation, House File 291, which was signed by the Governor and effective on February 17, 2017. House File 291 required parties who had not completed bargaining prior to February 17, to restart bargaining under the new law.

E. Actions following House File 291.

The parties met on February 20, 2017, and presented initial proposals as required by House File 291. United Faculty's proposal contained all the items that the parties had agreed to on December 15, 2016, as well as evaluation procedures and wage proposals. The BOR's proposal contained one item, an increase to base wages of one and one-tenth (1.1) percent—the new statutory maximum base wage increase based on the CPI.

Because United Faculty could not get a better outcome at arbitration, it accepted the BOR's initial proposal. United Faculty subsequently ratified and the BOR approved the tentative agreement containing only the base wage increase. That collective bargaining agreement went into effect July 1, 2017.

The 2017-2018 appropriations bill for the BOR, $3.3 million less than the previous fiscal year, passed on April 18, 2017, and was signed by the Governor in May. UNI did not receive the additional funding requested.

II. CONCLUSIONS OF LAW.

A. Prohibited Practices Alleged.

United Faculty's complaint alleges the State/BOR's commission of prohibited practices within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(*a*), (*e*), and (*f*) when the State/BOR failed to make counter offers to outstanding issues and failed to meet for bargaining or mediation for negotiations of a successive collective bargaining agreement effective July 1, 2017.

The provisions relevant to United Faculty's claims provide,

20.10 Prohibited practices.

1. It shall be a prohibited practice for any public employer, public employee, or employee organization to refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.

2. It shall be a prohibited practice for a public employer or the employer's designated representative to:

a. Interfere with, restrain, or coerce public employees in the exercise of rights granted by this chapter.

. . .

e. Refuse to negotiate collectively with representatives of certified employee organizations as required by this chapter.

f. Deny the rights accompanying certification granted in this chapter.

. . . .

Iowa Code § § 20.10(1), 20.10(2)(*a*),(*e*), and (*f*).

In prohibited practice proceedings, the complainant bears the burden of establishing each element of the charge. *Int'l Ass'n of Prof'l Firefighters, Local 2607 and Cedar Rapids Airport Comm'n*, 2013 PERB 8637 at 10; *AFSCME/Iowa Council 61 and Louisa Cnty.*, 2011 PERB 8146 at 9.

The thrust of United Faculty's claims is the BOR's actions constituted a refusal to bargain and a failure to negotiate in good faith. *See* Iowa Code § § 20.10(1) and 20.10(2)(*e*). If true, the BOR thereby interfered with the bargaining unit members' section 20.8 rights and committed a prohibited practice within the meaning of Iowa Code section 20.10(2)(*a*). Accordingly, this prohibited practice is "derivative" from the employer's commission of other section 20.10(2) prohibited practices. *See AFSCME/Iowa Council 61 and City of LeClair*, 2012 ALJ 8161 at 19. In contrast, independent violations occur when an employer violates section 20.10(2)(*a*) independent of other section 20.10(2) sections. *Id.*

We note that United Faculty has not specified the basis of its claim pursuant to section 20.10(2)(*f*), the denial of its rights accompanying certification. Previously, we determined that a union abandoned its section 20.10(2)(*f*) claim because the union failed to assert a supporting argument. *See Int'l Ass'n of Prof'l Firefighters, Local 2607*, 2013 PERB 8637 at 18.[6] However, it is not necessary for the Board to decide whether the State committed this prohibited practice since, under the record, the remedy for the employer's denial of the union's rights accompanying certification and the employer's failure to bargain in good faith would be the same.

B. Bargaining in Good Faith Principles.

The question of whether a party has failed to bargain in good faith is addressed on a case-by-case basis. *Pub. Prof'l and Maint. Emps. and Johnson Cnty.*, 2006 PERB 6662 at 8. The duty to bargain in "good faith" has been generally characterized as the obligation to participate actively in deliberations with a present intention to find a basis for agreement and a sincere effort to reach a common ground. *Int'l Ass'n of Prof'l Firefighters, Local 2607*, 2013 PERB 8637 at 11 (quoting *NLRB v. Montgomery Ward & Co.*, 133 F.2d 676, 686 (9th Cir. 1943)).

Because a party's intention or sincerity is a subjective characteristic, it has long been recognized that the presence or absence of "good faith" must be

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[6] *Compare Local 2607, with NLRB v. Gen. Elec. Co.*, where there is a suggestion that the claim, alleging a denial of rights accompanying certification, can be a derivative claim when the Court stated that the absence of good faith "implies that the Company can deliberately bargain and communicate as though the Union did not exist, in clear derogation of the Union's status as exclusive representative of its members under section 9(a)." 418 F.2d 736, 762-63 (2nd Cir. 1969).

inferred from the circumstantial evidence found in the record as a whole, i.e., the "totality of conduct" must be examined. *AFSCME Council 61 and Howard Cnty. Pub. Safety Center,* 1989 PERB 3776 at 6 (citation omitted). *See, e.g., Gen. Elec. Co.*, 150 NLRB 192 (1964), *enforced* 418 F.2d 736 (2nd Cir. 1969), *cert. denied* 397 U.S. 965 (1970) (totality of party's conduct is examined). *See also AFSCME/Iowa Council 61 and Carroll Cnty. Conserv. Bd.*, 2004 PERB 6918 at 3 (totality of the party's conduct is examined); *Albia Educ. Ass'n and Albia Cmty. Sch. Dist.*, 1991 PERB 4176 & 4193, ALJ at 25 (whether there is good faith is inferred from circumstantial evidence).

Since the Iowa statute is modeled closely after the National Labor Relations Act (NLRA), federal interpretation of the NLRA is instructive on the interpretation and application of Iowa law.[7] *See City of Davenport v. Pub. Emp't Rel. Bd.*, 264 N.W.2d 302, 313 (Iowa 1978). *See, e.g., Charles City Cmty. Educ. Ass'n and Charles City Cmty. Sch. Dist.*, 1990 PERB 3764 at 26 (examining NLRA principle that good faith bargaining requires negotiator claims to be honest ones). With respect to good faith bargaining required under the NLRA, the Supreme Court recognized that "[c]ollective bargaining . . . is not simply an occasion for purely formal meetings between management and labor while each maintains an attitude of take it or leave it; it presupposes a desire to reach

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[7] The NLRA explains that "to bargain collectively is the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." *See* 29 U.S.C. § 158(d). Section 8(a)(5) makes it an unfair labor practice for an employer to "refuse to bargain collectively with the representative of the employees." 29 U.S.C. § 158(a)(5).

ultimate agreement" and enter into a collective bargaining contract. *NLRB v. Insurance Agents' Union*, 361 U.S. 477, 485-86 (1960).

It is unnecessary to determine if each individual act of the employer is unlawful "in and of itself" if the conduct "as a whole" supports the conclusion that the employer had not bargained in good faith. *See* Steven D. Wheeless, Patrick E. Deady. Barry J. Kearney, *The Developing Labor Law*, ABA Sect. Labor & Emp't Law, at 13-11 (6th ed. 2016 Supp.). However, we analyze each material part of the negotiations process in consideration of the whole or totality of the employer's conduct.

C. Totality of the BOR's Conduct.

Based on our examination of the totality of the BOR's conduct, we conclude United Faculty established the State/BOR's commission of prohibited practices during the course of the parties' negotiations. In reaching our conclusion, we agree with several points raised by United Faculty in its appeal.

1. Bargaining history. First, in examining the parties' bargaining history for comparison, we agree with United Faculty that the parties did not follow their traditional negotiation schedule throughout the process. Galloway was new to BOR negotiations and his desire to have fewer meetings was not the traditional course of bargaining. Additionally, there is no indication that United Faculty agreed to fewer bargaining sessions and Galloway's suggested "new," not traditional, approach to negotiations. In fact, United Faculty insisted on meeting in December. There was no agreement to wait until January, as suggested by Fogt's internal email to BOR representatives. Even

Galloway testified that parties in state contract negotiations were at the table in December or early January. Based on the record, the parties' typical bargaining consisted of a number of bargaining sessions and bargaining as early as December.

The parties started negotiations in accord with past history and in good faith when they exchanged proposals on November 18 and bargained on December 15 with what appeared to be intent for further bargaining in January. They ended the session with expectations of further negotiations on evaluation procedures and wages. Due to the BOR's actions, the parties got off course when subsequent negotiations never came to fruition.

2. Meeting at reasonable times. The statute requires the parties to "meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith" with respect to section 20.9 mandatorily negotiable subjects. *See* Iowa Code § 20.9. While the December 15, 2016, negotiation session was productive, it was the only negotiation session that occurred between the parties in the 90 days from the initial exchange of proposals until the law changed. This one bargaining session was clearly insufficient during that timeframe to produce a collective bargaining agreement. The ALJ was incorrect in concluding that the parties followed their historic time frame for negotiations and was ahead of schedule by meeting in December. The parties did not "meet at reasonable times" "in advance" and they did not follow their traditional negotiation schedule leading up to the statutory deadline.

We do not think the onus to demand additional bargaining dates was with United Faculty—at least for a reasonable time in which it was led to believe proposals were forthcoming from the BOR. As late as January 11, Galloway texted, "I am trying to get a hard financial number to offer." As a result, the parties never addressed additional bargaining dates until mediation dates were discussed on January 18, 2017.

3. Conduct away from the table. While we have indicated that the parties' negotiations began in good faith, we do not reach the same conclusion regarding the BOR's conduct after December 15, 2016. The totality of conduct examined includes the employer's behavior at the bargaining table, but also its conduct away from the table that may affect the negotiations. *See Radisson Plaza Minneapolis v. NLRB*, 987 F.2d 1376, 1381 (8th Cir. 1993) (citation omitted) (employer committed unfair labor practice when it cancelled bargaining sessions and refused union's request for more frequent sessions).

Following the parties' December 15 bargaining session, the BOR's conduct cannot be characterized as active participation in deliberations with a present intention to find a basis for agreement and a sincere effort to reach a common ground. The BOR never returned a proposal on evaluation procedures or wages. Willems was unable to reach Galloway by telephone to get a status update on the BOR's promised wage proposal and finally sent a text to Galloway on January 11, 2017. On January 18, the BOR rejected 14 possible mediation dates, ranging from January 21 through February 11, 2017. The BOR would not mediate until February 20 although Galloway testified

about the October meeting, "And we knew we all wouldn't agree on everything, but we were going to move the process forward."

The BOR did everything but "move the process forward." We have previously recognized that deliberate delay of bargaining and impasse procedures may constitute a prohibited practice within the meaning of Iowa Code section 20.10 provisions. *See Dickinson Cnty. and AFSCME/Iowa Council 61*, 2004 PERB 6806 & 6834 at 7. Under federal law, dilatory and delaying tactics that undermine the collective bargaining process are indicative of bad faith. *Calex Corp. v. NLRB*, 144 F.3d 904, 909 (6th Cir. 1998). In the *Calex* case, the Court determined that a pattern of purposeful delay employed to thwart the bargaining process was a violation of the duty to bargain under Section 8(a)(1) and (5) of the NLRA by failing and refusing to meet at reasonable times. *Id.* We agree with the principle and reiterate our position that tactics that undermine the collective bargaining process are indicative of bad faith and may constitute prohibited practices within the meaning of Iowa Code section 20.10.

In totality, the BOR's actions demonstrate a pattern of delay that undermined the collective bargaining process and the parties' duty to participate actively in deliberations with a present intention to find a basis for agreement and a sincere effort to reach a common ground. In their telephone discussion on either January 17 or 24, 2017, Galloway informed Willems that the BOR would not proceed in negotiations until the legislative changes occurred to Iowa Code chapter 20. In an email on January 30, Galloway

reiterated BOR's position stating in part, "I cannot agree to anything until the introduction and subsequent passage of the reforms to [c]hapter 20." Galloway indicated his client's belief that reforms would occur in mid-February which was why Galloway set the impasse schedule as he did. The BOR made a unilateral decision to deliberately delay negotiations.

The Supreme Court held that parties must refrain from behavior "which reflects a cast of mind against reaching agreement" and behavior "which is in effect a refusal to negotiate or which directly obstructs or inhibits the actual process of discussion." *NLRB v. Katz*, 369 U.S. 736, 747 (1962). Galloway's January 30 email is direct evidence of the BOR's refusal to negotiate. During this entire period, the parties were subject to an ultimate statutory March 15 deadline regardless of UNI finances or the parties' personal conflicts or pending legislation. They did not set an independent impasse agreement until January 25 with no allowance for any other bargaining aside from mediation on February 20, 2017.[8] This was not in accord with the parties' past history of frequent bargaining sessions Galloway had acknowledged and referenced back in October.

4. Other considerations. We agree with the ALJ and reject BOR's contention that its delays were justified by financial considerations and the uncertainty of pending legislation. First, we are not persuaded that the BOR

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[8] Negotiations, including impasse procedures, are as follows: the presentation of initial offers in public meetings; any request for, the appointment of, and actual mediation; and any request for arbitration, the exchange of final offers, the selection of the arbitrator, the arbitration, and the issuance of the arbitrator's award. (*See* Iowa Code § § 20.17, 20.20, and 20.22. *See* also PERB administrative rules 621—chapter 7).

was ultimately motivated by these reasons. For one, United Faculty's wage offer took into account financial considerations, but the BOR left that proposal on the table and never returned a wage proposal of its own. As another example, the BOR never signed off on non-monetary agreed upon proposals. Instead, the BOR waited for the reforms to take effect, but not for the sake of clarification. The law changed very little from its introduction to its passage. When Galloway visited with legislators and made recommendations on chapter 20 reforms, the record supports a reasonable inference that Galloway had knowledge of the reforms and some idea of the extent to which the legislation would adversely affect United Faculty before the bill's passage. Based on the record, the BOR's entire purpose for delaying negotiations was to take full advantage of the collective bargaining legislation adverse to United Faculty.

Second, even assuming, *arguendo,* the BOR's conduct was motivated by financial considerations or concerns for uncertainty of the pending legislation, these stated reasons did not justify the BOR's delay in the negotiations. Reasons such as these are not a valid basis, in and of themselves, to "unreasonably delay bargaining or to *ipso facto* postpone bargaining until those matters are finally known." *See, e.g., Sioux City Educ. Ass'n and Sioux City Cmty. Sch. Dist.*, 1980 PERB 1560 at 5 (pending board election and absence of allowable growth and teacher salary movement information were not a valid basis for delay). Thus, financial considerations or the uncertainty of pending legislation were not a valid basis for what was an unreasonable delay in negotiations between the BOR and United Faculty.

We disagree with the State that BOR negotiated in good faith because the parties ultimately completed negotiations by the statutory deadline. Rather, we agree with United Faculty that the parties' negotiation of a successive collective bargaining agreement did not "unring the bell" and change the nature of the prior unlawful conduct—BOR's commission of prohibited practices that deprived United Faculty of meaningful bargaining prior to the effective date of House File 291.[9] United Faculty was put in a difficult position when the BOR refused to bargain. At the same time, it is incumbent upon parties to communicate their positions, efforts, and objections in moving negotiations and impasse procedures forward, which United Faculty failed to do. It is problematic that United Faculty agreed to the impasse schedule without objection. In any event, if the BOR was unaware of United Faculty's objection to the delays, the BOR was put on notice when United Faculty filed its prohibited practice complaint on February 3, 2017.

After United Faculty filed its complaint, the BOR still did not "right the wrong" and bargain or return the promised evaluation and wage proposals. Instead, the BOR waited for the passage of House File 291 and started bargaining anew on February 20, 2017, which was technically not "mediation." Thus, from the exchange of proposals on November 18, 2016, to the passage of House File 291 on February 17, 2017, a total of 90 days, the BOR bargained

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[9] Whether completion of an agreement by the statutory deadline is a factor supporting the presence of good faith, as was alleged in this case, is to be distinguished from an allegation that prohibited practice complaints and associated remedies are rendered moot when the parties reach a collective bargaining agreement. *See, e.g., AFSCME Iowa Council 61 and State of Iowa*, 2019 PERB 100817 at App. 15.

once with United Faculty and never engaged in impasse procedures with the exception of an arbitrator selection.

5. Summary. In totality, the BOR's conduct constituted a failure to bargain in good faith and a refusal to bargain, and interfered with, restrained, or coerced employees' exercise of their right to negotiate collectively with the State/BOR through their certified representative United Faculty. Thus, United Faculty established the BOR's commission of prohibited practices within the meaning of Iowa Code sections 20.10(1), 20.10(*a*), and (*e*).

D. Remedy.

We have thoroughly considered United Faculty's requested remedy. In fashioning an appropriate remedy, the Board attempts to place the parties in the position they would have been, but for the prohibited practice that occurred. *See Brotherhood of Clayton Cnty. Secondary Road Emps. and Clayton Cnty.*, 1987 PERB 3218 at 12. However, this is yet another prohibited practice case where we find this task difficult, if not impossible. *See Sioux Cty. Educ. Ass'n and Sioux Cty. Cmty. Sch. Dist.*, 1998 PERB 5842 at 20 (finding passage of time and intervening events made task difficult).

In this case, the passage of time, the change in law, and significant underlying facts are critical factors in fashioning an appropriate remedy. The parties reached a voluntary agreement and that contract has now expired. The parties have been subject to the new law since February 17, 2017. Additionally, the nature of the underlying prohibited practices complicates the timing of where to place the parties. As we determined, the parties began

negotiations on schedule and in good faith. Our conclusion that prohibited practices were committed thereafter is not based on any one act, but based on the totality of the BOR's actions. Of significance, too, is United Faculty's failure to object or put the BOR on notice of United Faculty's position throughout the delays. Without objection, United Faculty agreed to the impasse schedule that set mediation beyond the enactment of House File 291.

The appropriate remedy takes all of this into account. The circumstances do not warrant sending the parties back to the bargaining table to begin negotiations anew for an expired contract. Without objection, the parties agreed to meet after the law changed. We also do not agree that all former contract language (now considered permissive) should be ordered into the parties' current collective bargaining agreement. The BOR had not signed off on the agreed upon (T/A) proposals and Galloway's authority was limited to making a recommendation to the BOR. For all these reasons, the appropriate remedy is a cease and desist order.

Accordingly, we enter the following:

ORDER

The BOR is ordered to cease and desist from further violations of the Act, and shall, once students and faculty have returned and begun the 2019 fall semester, post the attached Notice to Employees in places customarily used for the posting of notices to employees for a period of not less than thirty (30) calendar days.

The costs of reporting and of the agency-requested transcript in the amount of $688.20 are assessed against the Respondent State pursuant to PERB rule 621—3.12. A bill of costs will be issued to the State in accordance with PERB subrule 621—3.12(3).

DATED at Des Moines, Iowa this 12th day of June, 2019.

PUBLIC EMPLOYMENT RELATIONS

Jamie K. Van Fossen, Interim Chair

Mary T. Gannon, Board Member

Original filed EDMS.

NOTICE TO EMPLOYEES

OF
STATE OF IOWA (BOARD OF REGENTS)
Employed at the University of Northern Iowa

POSTED PURSUANT TO A DECISION OF THE PUBLIC EMPLOYMENT RELATIONS BOARD

The Iowa Public Employment Relations Board (PERB) has determined that the State of Iowa (Board of Regents), a public employer, committed prohibited practices within the meaning of Iowa Code sections 20.10 (1) and 20.10 (2) (*a*), and (*e*).

The violations occurred in late 2016/early 2017, when the State/Board of Regents refused to make counter offers to outstanding issues and failed to meet for bargaining or mediation for negotiations with UNI-United Faculty (AAUP IHEA) for a successive collective bargaining agreement effective July 1, 2017. PERB has concluded that these actions by the employer constituted a failure to bargain in good faith, a refusal to bargain, and interfered with, restrained or coerced the employees' exercise of their right to negotiate collectively with the State Board of Regents through their certified representative UNI-United Faculty (AAUP IHEA).

The sections of the Iowa Public Employment Relations Act, Iowa Code chapter 20, found to have been violated provide:

20.10 Prohibited practices.

1. It shall be a prohibited practice for any public employer, public employee or employee organization to willfully refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.
2. It shall be a prohibited practice for a public employer or the employer's designated representative willfully to:
a. Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter.
e. Refuse to negotiate collectively with representatives of certified employee organizations as required in this chapter.

To remedy the violation, the State (Board of Regents) has been ordered to cease and desist from any further like violations of the law and to post a true copy of this Notice for 30 days in those places customarily used for the posting of information to employees at the University of Northern Iowa in the bargaining unit represented by UNI-United Faculty.

Any questions concerning this Notice or the State/Board of Regent's compliance with its provisions may be directed to the Public Employment Relations Board at 515/281-4414.

Issued: June 12, 2019 (To be posted August 27, 2019)